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Jimmy Gurule Delivered the Opening Address at the Asian Banker Conference in Singapore

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The Asian Banker Financial Crime 360

**Preventing Financial Crime and Preempting
Crises with Superior Compliance Capabilities**

23-24 November 2015

Singapore



UNIVERSITY OF
NOTRE DAME

The Law School

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Notre Dame Law School

Changing Guidelines and Regulatory Landscape

The Yates Memorandum

Moving from Deferred Prosecution Agreements targeting banks to prosecuting bank officials

Deferred Prosecution Agreements

Violating U.S. Economic Sanctions (e.g., Iran, Sudan, Syria)

- Lloyds TSB Bank -- \$350 million (2009)
- Credit Suisse AG -- \$536 million (2009)
- Barclays Bank PLC -- \$298 million (2010)
- ABN AMRO Bank -- \$500 million (2010)
- ING Bank -- \$619 million (2012)

Deferred Prosecution Agreements – cont'd

Violating U.S. Economic Sanctions (e.g., Iran, Sudan, Syria)

- Standard Chartered Bank -- \$227 million (\$100 million civil penalty) (2012)
- HSBC Bank USA -- \$1.9 billion (2012)
- *Clearstream Banking -- \$152 million (2014) (U.S. Treasury Dept.)

Deferred Prosecution Agreements – cont'd

Violating U.S. Economic Sanctions (e.g., Iran, Sudan, Syria)

- BNP Paribas -- \$8.9 billion (2014)
- Commerzbank AG \$1.45 billion (2015)
- Credit Agricole -- \$787 million (2015)
- Deutsche Bank \$258 million (2015)

Libor Rate-Rigging Scandal

- Barclays Bank -- \$160 million (2012)
- UBS Bank -- \$1.5 billion (2012)
- Deutsche Bank -- \$2.5 billion (2015)

The Yates Memorandum

Expanding the DOJ's Efforts to Combat Corporate Wrongdoing and Hold Individuals Accountable

- To be eligible for any cooperation credit, corporations must provide DOJ “all relevant facts” relating to all individuals responsible for corporate misconduct, regardless of the level of seniority.
- Both criminal and civil DOJ investigations should focus on individuals “from the inception of the investigation.”

The Yates Memorandum – Cont'd

- Criminal and civil DOJ attorneys handling corporate investigations should be in “routine communication” with each other, including criminal attorneys notifying civil counterparts “as early as permissible” when conduct giving rise to civil liability is discovered (and vice versa).
- “Absent extraordinary circumstances,” DOJ should not agree to corporate resolution that provides immunity to potentially culpable individuals.

The Yates Memorandum – Cont'd

- DOJ should have a “clear plan” to resolve open investigations of individuals when the case against the corporation is resolved.
- Civil attorneys should focus on individuals as well as companies, taking into account issues such as accountability and deterrence in addition to the ability to pay.

Libor-Rigging Prosecutions

- Two ex-Rabobank Group traders were convicted on Nov. 5 for rigging key financial benchmark
- U.S. has charged 13 bank employees with manipulating the benchmark (3 pleaded guilty)
- Former trader at UBS Group AG and Citigroup Inc. sentenced to 14 years in prison by London judge

The Best Defense is a Proactive Response

- Implementation of robust ethics and compliance programs designed to deter, identify, and remediate violations of laws and regulations;
- BSA compliance program should be comprehensive extending across product lines and departments;

The Best Defense is a Proactive Response – Cont'd

- Robust employee training and issue reporting mechanisms;
- Extensive management support of those compliance efforts, including active oversight by management, up to the board level;
- Employee incentives for reporting suspected corporate wrongdoing.

Conclusion